

September 3, 1981

MEMORANDUM

TO: Philip Morris Files
FROM: Jerome I. Chapman *JC*
RE: Barclay - Conversation with Matthew Myers
of September 3, 1981

I spoke this afternoon to Matthew Myers and asked him about the current status of the Barclay investigation.

Myers told me that he is expecting Brown & Williamson's response, in that company's words, "any day." Myers told me that it has been only a week since the B&W people had a chance to examine and analyze the Philip Morris dilution machine in Boston and that, at this point, he is satisfied that B&W is proceeding in good faith. He said, however, that if B&W's response is not forthcoming within "a fairly short time," he will call Pepples and give him an absolutely final deadline of three additional days to present B&W's further views.

I told Myers that I recognized that Dr. Kamm and some other B&W consultants had not seen the

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Philip Morris dilution measuring apparatus until last week, but others at B&W had seen the machine and known about its results many months ago. I expressed the hope that Myers would not allow matters to drift much longer, and he indicated that he was interested in resolving the issues raised by Barclay as soon as possible.

Myers stated that, once he receives the B&W submittal, he will circulate the most recent round of company memoranda to all the cigarette companies along with a statement of what the FTC staff views as the relevant issues presented. He said that, simultaneously with the circulation of the recent memoranda, the staff will contact the potential expert or experts it would like to use to determine their availability and schedule. Thereafter, Myers said he would be in a position to determine the likely timetable of further proceedings.

In connection with the issue of experts, Myers mentioned that he was waiting for the reaction from Philip Morris and others regarding the potential

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experts whose names he had supplied to us. I told him that we were canvassing various people within the company who would be able to comment on these experts, and that due to vacation schedules, we would not be able to complete this canvass until sometime next week.

Myers stated that he understood our position that we would be better able to comment on the qualifications of proposed experts if we knew the issues that were to be focused upon. He said, however, that he believes we should be aware of the full range of potential issues, and that he would like to have our views on each of the experts, focusing on which of them would be best qualified to deal with each of the potential issues involved. Myers further stated that the staff has no intention of pursuing every issue that has been raised. After some prodding by me, he indicated that he has a tentative opinion as to which issues he would not pursue, but he did not want to state his position on this subject until after he has had a chance to review the forthcoming B&W submittal.

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In the course of our discussion, Myers stated that he was aware of our position that the most important issue involves the dilution measurement apparatus. I told him that we thought that this was the only valid issue. Myers said that he thinks it is very important to see what B&W will say about the dilution machinery now that it has had a chance to analyze it closely.

Myers will let us know as soon as he receives the B&W submittal. I told Myers that we would try to give him some comments from Philip Morris regarding the potential experts before the end of next week.

cc: Alexander Holtzman, Esq.
G. Carl Adkins, Esq.
Abe Krash, Esq.
Harry Katz, Esq.

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